IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7046 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHBHAI CHHANABHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 7046 of 2003

MR PANDYA with MS KRISHNA U MISHRA for Petitioner No. 1

MR RM CHAUHAN, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order passed by the Police Commissioner, City of Surat, on 7th February,

2003, in exercise of powers conferred upon him under sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) declaring the petitioner to be "bootlegger" within the meaning of PASA Act. In pursuance of the above said order, the petitioner came to be detained.

2. The grounds of detention placed on record and served upon the detenu petitioner. Sufficiently reveal that the detaining authority came to the conclusion of detaining the petitioner on two grounds. The first is in respect of registration of the offence against the petitioner under Sec.66(1)(b), 65(e), 81 and 116(2) of the Bombay Prohibition Act, on 5th January, 2003. Secondly, the detaining authority has relied upon two in camera statements of witnesses recorded by proposing authority on 26th January, 2003, and verified by detaining authority on 5th March, 2003. Both the witnesses have revealed the incident of 17th December, 2002 and 26th November, 2002. As per the incident of 26th November, 2002, the witness stated that he was forced by petitioner to conceal the bulk of illegal liquor because police was behind the petitioner for his illegal activities. On refusing by the witness, the witness was beaten by the petitioner and when crowd was gathered and was attempting to escape the witness, the associates of the petitioner rushed towards the crowd with the weapons and the crowd was dispersed. In other incident, which occurred on 17th December, 2002, the witness was forced by petitioner and his accomplices to transport bulk of illegal liquor in the vehicle of the petitioner. On refusal, the witness was beaten and like earlier incident, when the crowd was gathered to rescue the witness, the associates of the petitioner rushed towards the crowd with the weapons and nobody came to the rescue of the witness, the crowd was dispersed. People gathered there sought hidings and the locality was disturbed due to terror and fear created by the petitioner and his accomplishes. From the above material, the detaining authority passed the order impugned in this Special Civil Application.

3. Learned advocate Mr.Pandya was heard on behalf of the petitioner while learned AGP Mr.R.M.Chauhan was heard on behalf of the respondent.

4. On behalf of the petitioner many contentions raised and controverted by learned AGP. Out of which certain dates are material for the decision of this application. So far as factual scenario emerges from the ground, the first incident in which the petitioner was

involved occurred on 26th November, 2002, but the same is not reported to the police. The second incident occurred on 17th December, 2002, and the same is also not reported to the police. Thereafter, as said above, on 5th January, 2003, offence under Bombay Prohibition Act came to be registered against the petitioner. On 26th January, 2003, the proposing authority recorded the statement of the witnesses which were verified on 5th February, 2003, and order came to be passed on 7th February, 2003. The learned AGP Mr.Chauhan on behalf of the respondent has vehemently defended the contention that the order is vitiated by delay in passing the order by detaining authority. As it appears from the record, the proposing authority recorded the statements on 26th January, 2003, only of the incident which occurred on 26th November, 2002, and 17th December, 2002. The activities of the petitioner, according to detaining authority was so prejudicial then this delay would not have occurred. Delay itself in passing the order may not be fatal but when delay is unexplained, vitiates the subjective satisfaction of the detaining authority. In this case, the delay as above said, either of recording statement of witnesses by the proposing authority or passing of the order thereafter is not explained. The facts of the case is squarely covered by a decision of the Supreme Court in the matter of Pradeep N.Paturkar Vs. S.Rammurthi reported in AIR 1994 SC 656. The order, therefore, impugned in this special civil application on this ground alone is required to be quashed and set aside.

5. In the result, this special civil application is allowed. The order impugned in this petition passed on 7th February, 2003, by the Police Commissioner, City of Surat, in exercise of powers conferred upon him under sec.3(1) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute to the above extent. Direct service is permitted.

(J.R. Vora, J.)

syed/